REMARKS

The applicants' traverse the restriction and assert that it was made in error by relying on the wrong standard for making a restriction. This application is a National Stage entry of PCT/EP04/08068 (WO 2005-011797) and therefore, any restriction must be based on the lack of unity of invention standard set forth by 35 U.S.C. 371, not 35 U.S.C. 121 as asserted in the restriction requirement.

In the event that the standard is corrected, the applicants note that no lack of unity of invention was made in the corresponding PCT application. It is noted that MPEP 706.04 states in part that full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001). With respect to the issue of unity of invention, the Examiner preparing the International Search Report and Written Opinion ***was required to follow the same unity of invention standard*** of the current Examiner for this application. There was no reason to revisit this issue in the National Stage application absent any evidence of clear error.

Lastly, MPEP 821.04 (Rejoinder) states in part that "Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called under 35 U.S.C. 121 to elect claims to either the product or the process. See MPEP § 806.05(f) and § 806.05(h). The claims directed to the nonelected invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 809.02(c) and § 821 through § 821.03. However, if an applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined."

As the applicants have elected the product, the claims of Group I should be rejoined upon allowance of claims 3-6 (The Examiner is authorized to amend claim 1 such that the plaster refers to the plaster of claim 3).

For any of the above reasons, the entire subject matter of claims 1-6 should be examined.

CONCLUSION

In view of the above, reconsideration and withdrawal of the restriction requirement is respectfully requested. It is also believed that the application is in condition for allowance, and favorable consideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. Favorable action is earnestly solicited.

Respectfully submitted,
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